

Notice of Proposed Changes in Regulations of the Fish and Game Commission

(Continuation of Register 2005, No. 7-Z, and Commission Meeting of February 4, 2005)

(Note: The Commission is exercising its powers under Section 202 of the Fish and Game Code as the following changes to the proposed regulations may not be available to the public for the full public comment period prior to the adoption. See the Updated Informative Digest.)

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 200, 202, 205, 215, 220, 240, 315 and 316.5, of the Fish and Game Code and to implement, interpret or make specific Sections 200, 205, 206, 215 and 316.5, of said Code, proposes to amend Subsection 7.50(b)(91.1), Title 14, California Code of Regulations to conform Klamath River and Trinity River fishing regulations to those agreed upon by the Pacific Fishery Management Council (PFMC).

Updated Informative Digest/Policy Statement Overview

Hook Size Change for Anadromous Waters of the Klamath River System: Current regulations in subsection (b)(91.1)(A)2. of Section 7.50 define Special Fishing Methods Restrictions for all anadromous waters of the Klamath River below Iron Gate Dam. These requirements restrict the use of single barbless hooks having a shank longer than 2 inches, or any multiple barbless hook having a gap between the point and shank greater than 3/4 inch. For clarification and in the interest of consistency, the Department is recommending language from Section 2.10, Hook and Weight Restrictions be incorporated in subsection (b)(91.1)(A)2. of Section 7.50. This recommendation would eliminate the 2 inch shank restrictions on single barbless hooks and create a maximum gap for single barbless hooks of 1 inch. The proposed regulation would continue to restrict the use of any multiple hooks with a gap greater than 3/4 inch. This recommendation will make fishing gear restrictions for all anadromous waters of the Klamath River system consistent with statewide restrictions for river and streams excluding the Sacramento-San Joaquin Delta.

Quota Adjustment: Under current regulations in subsection (b)(91.1)(C), the allowable Chinook salmon harvest in the Klamath River system is based on spawning run-size predictions and spawning escapement goals. The harvest and the distribution of the catch are regulated by seasons, daily and weekly bag and possession limits, and area quotas and allocations.

Annual adjustment of the quota is necessary to meet natural and hatchery escapement needs for Klamath River fall-run Chinook salmon stocks, while providing equitable harvest opportunities for ocean (sport and commercial) and river (sport and tribal) users. The total river system recreational harvest of fall-run Chinook salmon is currently regulated by a quota. In 2004, the share, or impact quota, for the Klamath River basin allowable sport catch was 4,700 adult fish (15 percent of the total allowable harvest by non-tribal fisheries, including ocean-commercial, ocean-recreational and recreational-river fisheries).

~~Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2005 season are not yet available from the PFMC. Consequently, the Department is suggesting that the Commission consider a range of 0 - 21,000 adult Chinook salmon quota for the river recreational fishery for notice requirements.~~

Projections of the abundance of adult Klamath River fall-run Chinook salmon in the 2005 season are considerably lower than 2004. Consequently, the Fish and Game Commission at their March 18, 2005 meeting tentatively adopted an in-river quota of 1,262 adult Chinook salmon. The Commission also will consider modifying the share of the allowable catch allocated to the river recreational fishery (which was 15 percent in 2004). Adjustment of this share is included in the recommended 0 - 21,000 range of the quota. As in prior years, the river recreational fishing quota would be split evenly between the fisheries within each sub-quota areas above and below the Highway 96 bridge at Weitchpec.

Closures to Modify Allocations: The Department believes that the regulations should, if possible, allow fishing opportunities for adult fall-run Chinook salmon throughout the entire Klamath River Basin. Currently, the annual recreational impact quota is split evenly, with 50% of the quota allocated to the

Klamath River below the Highway 96 bridge at Weitchpec and 50% to the remainder of the Klamath River Basin above the Highway 96 bridge at Weitchpec, including the Trinity River. Proposed regulations define three sub-quota areas above the Highway 96 bridge at Weitchpec. The three quotas ensure equitable harvest of adult fall-run Chinook in the upper Klamath and Trinity rivers.

The 2005 quota to be recommended by the PFMC is not currently known; however, **the Fish and Game Commission tentatively adopted a 15% (1,262) fish quota for** ~~it is expected to be similar to what was established for the 2004~~ **2005** season. All closures for adult Chinook salmon will be designed to maximize and distribute the harvest of adult fall-run Chinook salmon while managing the fishery within the impact quota.

The current quota system requires the Department to monitor angler harvest of adult Chinook in each sub-quota area on a real-time basis. Due to funding and personnel reductions, the Department will be unable to deploy adequate personnel to conduct harvest monitoring in the upper Klamath River above the Highway 96 bridge at

Weitchpec and the Trinity River above Willow Creek for the 2005 season. Instead, the following recommendations are based on data analysis and management experiences from previous years that estimate harvest in the upper reaches of the Klamath River Basin relative to known harvest in the lower Klamath River.

1. Klamath River Main Stem - Allowable Fishing Season from the Highway 96 Bridge at Weitchpec to 3,500 feet below Iron Gate Dam:

The Department has reviewed all available Klamath Chinook harvest and run-timing data for the Klamath River from several previous years. Based on this review, the Department has developed a Harvest Predictor Model (HPM) which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the upper river. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

2. Upper Trinity River Main Stem - Allowable Fishing Season from Old Lewiston Bridge to the Highway 299 West Bridge at Cedar Flat:

The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath and Trinity Rivers and the number of fish harvested in the upper Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

3. Lower Trinity River Main Stem - Allowable Fishing Season from Hawkins Bar Bridge (Road to Denny) Downstream to the Mouth of the Trinity:

The Department has reviewed all available Trinity River Chinook harvest and run-timing data for this area. Based on this review, the Department has developed a HPM which incorporates creel data from the Klamath River from Iron Gate Dam downstream to the confluence with the Pacific Ocean and the Trinity River from Lewiston Dam downstream to the confluence with the Klamath River. The HPM is driven by the positive relationship between the number of fall-run Chinook salmon harvested in the lower Klamath River and the number of fish harvested in the lower Trinity River. The HPM will allow the Department to implement fishing closures to ensure that anglers do not exceed established quota targets.

Maintain Daily Bag Limit, Weekly Bag Limit and Possession Limit: ~~The 2005 quota to be recommended by the PFMC is not currently known; however, it is expected to be similar to what was established for the 2004 season. Consequently, the Department is not recommending any changes in the daily bag, weekly bag, and possession limits for the 2005 Klamath River sport fishery.~~

Options designed to maximize and distribute the harvest of adult fall-run Chinook salmon:

The Department is proposing three regulatory options designed to maintain the harvest of adult Chinook salmon in the Klamath River through Labor Day (September 5, 2005) weekend. All three options are based on the probable in-river quota of 1,262 fish and input received from the angling community at three public meetings.

Option 1:

Allow anglers to retain adult Chinook salmon five days a week with a limit of no more than three adults to be retained over any period of seven consecutive days. The retention of adult Chinook salmon would be prohibited on Tuesdays, and Wednesdays from August 1, 2005 through November 30 or until the quota is met. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day, and retain one hatchery steelhead. No more than 12 Chinook salmon may be possessed, of which no more than 3 may be over 22 inches total length. Based on historical harvest information, this option would allow anglers to retain adult Chinook salmon in the lower Klamath through approximately September 6, upper Klamath through approximately October 4, lower Trinity through October 21, and upper Trinity through October 6.

Option 2:

Allow anglers to retain adult Chinook salmon five days a week with a limit of no more than two adults to be retained over any period of seven consecutive days. The retention of adult Chinook salmon would be prohibited on Tuesdays, and Wednesdays from August 1, 2005 through November 30 or until the quota is met. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day, and retain one hatchery steelhead. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length. Based on historical harvest information, this option would allow anglers to retain adult Chinook salmon in the lower Klamath through approximately September 8, upper Klamath through approximately October 7, lower Trinity through November, and upper Trinity through October 12.

Option 3:

Allow anglers to retain adult Chinook salmon four days a week with a limit of no more than two adults to be retained over any period of seven consecutive days. The retention of adult Chinook salmon would be prohibited on Mondays, Tuesdays, and Wednesdays from August 1, 2005 through November 30 or until the quota is met. During the modified closures anglers could continue to catch and release adult Chinook salmon, harvest two Chinook salmon less than 22 inches total length per day and retain one hatchery steelhead. No more than 12 Chinook salmon may be possessed, of which no more than 2 may be over 22 inches total length. Based on historical harvest information, this option would allow anglers to retain adult Chinook salmon in the lower Klamath approximately September 17, upper Klamath through approximately October 17, lower Trinity through November, and upper Trinity through October 21.

NOTICE IS ALSO GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Secretary of State Auditorium, 1500 11th Street, Sacramento, California on Thursday, May 5, 2004, at 8:30 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted at least ten days before the May meeting, at the address given below, or by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be

received no later than May 5, 2005, at the hearing in Sacramento, CA. All written comments must include the true name and mailing address of the commentor.

The regulations as proposed in ~~strikeout~~-underline format, as well as an initial statement of reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries to Jon Fischer or Jon Snellstrom at the preceding address or phone number. Ms. Patricia Wolf, Department of Fish and Game, phone (562) 342-7108 has been designated to respond to questions on the substance of the proposed regulations. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.dfg.ca.gov>.

Availability of Modified Text

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. **Circumstances beyond the control of the Commission (e.g., timing of Federal regulation adoption, timing of resource data collection, timelines do not allow, etc.) or changes made to be responsive to public recommendation and comments during the regulatory process may preclude full compliance with the 15-day comment period, and the Commission will exercise its powers under Section 202 of the Fish and Game Code. Regulations adopted pursuant to this section are not subject to the time periods for adoption, amendment or repeal of regulations prescribed in Sections 11343.4, 11346.4 and 11346.8 of the Government Code.** Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

Impact of Regulatory Action

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact affecting businesses, including the ability of California businesses to compete with businesses in other states. The preservation of Klamath River salmon stocks is necessary for the success of lower and upper Klamath River Basin businesses which provide goods and services related to fishing. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.
- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on Private Persons or Businesses: The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.
- (e) Other Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: April 15, 2005

Jon Fischer
Assistant Executive Director